

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1662 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

1 to 5 No.

JUVANSINH H SODHHA

Versus

DIRECTOR

Appearance:

MR DH WAGHELA for Petitioner

MR VM PANCHOLI AGP for Respondents.

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 02/08/1999

ORAL JUDGEMENT

1. In this petition under Articles 226 and 227 of the Constitution, the petitioner, an ex-watchman of E.S.I.S. Dispensary at Jamnagar has challenged the judgment and award dated 21-11-1988, passed by the Labour Court, Rajkot, rejecting the petitioner's Recovery Application No.2347/84 under Section 33 (C) (2) of the Industrial Disputes Act, 1947.

2. The petitioner had filed the above application for recovery of sum of Rs.81,230/- on the ground that the petitioner was not paid overtime wages for the period from the date of joining his services i.e. 1-4-68 till the date he left the employment in the year 1984 and also on the ground that the petitioner was not paid wages for the weekly off days and public holidays. The petitioner examined himself as a witness and submitted that the petitioner was rendering 14 hours service every day which was 6 hours in excess of the period of 8 hours duty (48 hours for 6 days) as stipulated in the Minimum wages Act. According to the petitioner he was reporting for duty at 6-30 p.m. and was working till 8-30 a.m. next day and thus rendering 14 hours services a day. In support of the said averment, the petitioner has produced time book at mark 14/1. The petitioner further submitted that the petitioner was not given any weekly off or public holiday and the petitioner had to render services as a watchman on all days round the year.

3. On behalf of the respondent-corporation, written statement at Exh.12 was filed denying the petitioner's claim. However, no oral or documentary evidence or service rules were produced on behalf of the respondent. The Labour Court did not act upon the time book at mark 14/1 and did not find the same to be reliable though the Labour Court did refer to the letters at Exh.17 written by the in-charge Medical Officer of the E.S.I.S. Dispensary at Jamnagar to the petitioner requiring the petitioner to render services from 8-00 p.m. to 8-00 a.m. The Labour Court gave the finding that there was no documentary evidence to show that the petitioner was called upon to render services in excess of the duty hours specified. Similarly in respect of the weekly off and public holidays, the Labour Court held that no documentary evidence was produced in support of the claim. The Labour Court accordingly dismissed the recovery application.

4 Learned counsel for the petitioner submitted at the hearing of this petition that when admittedly the petitioner's duties were only from 8-00 p.m. to 8-00 a.m. and the petitioner had stated on oath that he reported for duties at 6-30 a.m., the tribunal ought to have accepted the said statement made on oath when the respondent did not convert the same by leading any oral or documentary evidence and also in view of the fact that the E.S.I.S. dispensaries closed at 6-30 p.m. The Labour Court erred in holding that there were two other watchmen besides the watchman at the E.S.I.S. dispensary

because in all there are three E.S.I.S. dispensaries at Jamnagar and there were three different sanctioned posts of watchmen, but only two posts of watchmen were filled in at the relevant time.

On the other hand, learned A.G.P. submitted that the Labour Court has given the findings of fact. Therefore, this petition requires to be rejected.

5. Having heard the learned counsel for the parties it appears to the Court that when the petitioner's duty hours were specified as per Exh.17 from 8-00 p.m. to 8-00 a.m. and when the petitioner was paid salary in a running time scale which was more than minimum wages stipulated under the Minimum Wages Act, there was no question of proceeding on the assumption that the petitioner's duty hours were taken at 8 hours only. Looking to the nature of the duties of the petitioner, the petitioner would be required to render services when the dispensary would be closed but in view of the fact that according to the Medical Officer the petitioner's duty hours were 8-00 p.m. to 8-00 a.m. and the petitioner was reporting at 6-30 p.m., it can certainly be said that the petitioner was rendering additional services for 1 1/2 hours every evening.

The petitioner has also referred to the award passed by the Labour Court in the case of E.S.I..S. Dispensary at Ahmedabad. No copy of such award is produced before this Court to show that the petitioner is entitled to get over time wages for the period for about 1 1/2 hours duration every evening.

6. As far as the payment of wages in lieu of weekly offs and public holidays is concerned, the stand of the respondent is that the petitioner was not required to render services as a watchman on public holidays. However, no oral or documentary evidence was led on behalf of the respondent. Looking to the nature of the duties of the watchman, one would expect that a watchman would be required to render services whenever the concerned premises, E.S.I.S. dispensary in the present case, remains closed. It would of course be a matter of evidence in each individual case as to for how many hours the watchman is rendering services on weekly off and public holidays. For ought one knows, the watchman may just go to the premises and thereafter go back to his residence and accordingly may be discharging his duties only intermittently and not continuously.

In this view of the matter, this Court might have remanded the matter to the Labour Court for recording

evidence on this factual aspect, but considering the fact that the petition was pending on the docket of this Court for the last ten years and what the petitioner claimed is wages for the full day hours and night hours on weekly offs and public holidays. Therefore, the court would proceed to assume that the petitioner was rendering services as a watchman for 8 hours out of 24 hours on weekly offs and public holidays.

7. The next question is for what period the petitioner should be awarded the benefits of over time and the wages in lieu of the weekly offs and public holidays. The petitioner has claimed the same right from 1-4-68 when he joined the service. Although no period of limitation is prescribed under the Act for lodging the recovery application under Section 33 (C) (2), nevertheless the workman is expected to lodge the claim within reasonable period. No explanation is offered as to why the claim was not made earlier. In the facts and circumstances of the case, therefore, the Court would confine the grant of all benefits for three years immediately prior to 1-5-1981 i.e. the date of recovery application.

8. In the result, the petition is partly allowed. The judgment and award of the Labour Court as Annexure "F" is set aside and the respondents are directed to pay the petitioner the arrears of overtime for 1 1/2 hours every day for a period of three years from 1-5-1978 to 30-4-1981, and also to pay the petitioner arrears of wages in lieu of the weekly offs and public holidays during the aforesaid period of three years on the basis that the petitioner had rendered services as a watchman for eight hours on weekly offs and public holidays.

In the facts and circumstances of the case, the respondents are also directed to pay the petitioner simple interest at the rate of 9 % per annum from 1-5-1981 (i.e the date of filing of the recovery application) till the date of payment.

The respondents shall comply with the aforesaid directions within a period of three months from the date of receipt of the writ of this Court or a certified copy of this judgment, whichever is earlier, failing which the amount shall carry interest at the rate of 12 % per annum from today.

9. Rule is made absolute accordingly with no order as to costs.

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